Draft Last Revised 8/12/2015 (Post-8/05/2015 Meeting))

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:	)	U.S. EPA Docket No. ____
Columbia Falls Aluminum Plant a/k/a Anaconda Aluminum Co. Columbia Falls Reduction Plant	)	CERCLA Docket No. ____
Columbia Falls Aluminum Company, LLC,	)	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY**
Respondent.	)	
Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622.	)	

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
ADMINISTRATIVE SETTLEMENT AGREEMENT
AND ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION/FEASIBILITY STUDY

TABLE OF CONTENTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Columbia Falls Aluminum Company, LLC ("Respondent"). The Settlement Agreement concerns the preparation and performance of a remedial investigation and feasibility study ("RI/FS") at the Anaconda Aluminum Co Columbia Falls Reduction Plant a/k/a Columbia Falls Aluminum Plant generally located near Columbia Falls in Flathead County, Montana ("Site") and payment of Future Response Costs incurred by EPA in connection with the RI/FS as well as Past Response Costs.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 14, 1994) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated to the Director, Montana Office, EPA Region 8, on August 30, 2002, and supervisors in the Technical Enforcement Program and the Legal Enforcement Program, Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, on October 17, 1997.

Commented [A1]: The EPA proposed changes in redline are housekeeping changes to correct the FR citation and EPA delegation dates.

3. In accordance with Sections 104(b)(2) and 122(j)(1) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and 9622(j)(1), on August __, 2015, EPA notified the federal and state natural resource trustees of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and/or state trusteeship.

4. EPA and the Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by the Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. The Respondent does not admit, and retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact in Section V and the conclusions of law and determinations in Section VI. The Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon the Respondent and its successors and assigns. Any change in ownership or corporate status of

Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Settlement Agreement.

6. The Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. The Respondent shall be responsible for any noncompliance with this Settlement Agreement by the Respondent and its contractors, subcontractors and representatives.

7. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

III. STATEMENT OF PURPOSE

8. In entering into this Settlement Agreement, the objectives of EPA and the Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a remedial investigation as more specifically set forth in the Remedial Investigation/Feasibility Study Work Plan ("RI/FS Work Plan") attached as Appendix A to this Settlement Agreement and the EPA-approved Sampling and Analysis Plans ("SAPs") that will be issued during the preparation and performance of the RI/FS; (b) to identify and evaluate remedial alternatives to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site, by conducting a feasibility study as more specifically set forth in the RI/FS Work Plan; and (c) to recover response and oversight costs incurred by EPA with respect to this Settlement Agreement, as well as Past Response Costs.

9. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). The Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidances, policies, and procedures.

IV. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601-9675.

"Columbia Falls Aluminum Plant Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"DEQ" shall mean the Montana Department of Environmental Quality and any successor departments or agencies of the State.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XXVIII.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Engineering Controls" shall mean constructed containment barriers or systems that control one or more of the following: downward migration, infiltration, or seepage of surface runoff or rain; or natural leaching migration of contaminants through the subsurface over time. Examples include caps, engineered bottom barriers, immobilization processes, and vertical barriers.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in: (1) reviewing or developing plans, reports, and other deliverables submitted pursuant to this Settlement Agreement; (2) overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs; (3) ~~the costs incurred pursuant to Section XII (Site Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access, including, but not limited to, the amount of just compensation);~~ (4) the costs incurred pursuant to Paragraph 46 (Emergency Response); (~~4~~5) the costs incurred pursuant to Paragraph 89 (Work Takeover); ~~(6) the costs incurred by the United States in enforcing the terms of this Settlement Agreement; (7) all costs incurred in connection with Section XV (Dispute Resolution); (8) all litigation costs;~~ (~~5~~9) Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site; and (~~6~~10) all Interim Response Costs; and (11) all interest that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 9, 2015 to the Effective Date on those Past Response Costs that the Respondent has agreed to pay under this Settlement Agreement.

Commented [A2]: At the 8/5/2015 meeting, CFAC requested an opportunity to further review the various components of the "future response costs" definition.

"Institutional controls" shall mean non-engineered instruments, such as administrative and/or legal controls, that help to minimize the potential for human exposure

to contamination and/or protect the integrity of a remedy by limiting land and/or resource use. Examples of institutional controls include easements and covenants, zoning restrictions, special building permit requirements, and well drilling prohibitions.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.[1]

"Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs, (a) paid by the United States in connection with the Site between February 1, 2015 and the Effective Date, or (b) incurred prior to the Effective Date, but paid by the United States after that date.

Commented [A3]: At the 8/5/2015 meeting, CFAC requested that EPA consider modifying the phrase, "but paid after that date" by inserting "invoiced and" before "paid." EPA is not able to accept CFAC's proposal. The Agency tracks response costs by the date that EPA (United States) pays a bill. The date on which a cost is invoiced prior to being paid is not part of how EPA tracks response costs.

"NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter. References to paragraphs in the SOW will be so identified, *e.g.*, "SOW Paragraph 15."

"Parties" shall mean EPA and the Respondent.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the date of January 31, 2015, plus Interest on all such costs as of the June 9, 2015 EPA demand.

"RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992.

"RI/FS Work Plan" shall mean the work plan developed by the Respondent and approved by EPA to perform the Remedial Investigation and Feasibility Study as those terms are defined in Section IX (Work to Be Performed). The RI/FS Work Plan is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement as are any modifications made thereto in accordance with this Settlement Agreement.

"Respondent" shall mean Columbia Falls Aluminum Company, LLC.

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[1] The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"SAPs" shall mean sampling and analysis plans approved by EPA for activities to be performed as part of the RI/FS for the Site.

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, all appendices attached hereto (listed in Section XXVII), and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

"Site" shall mean the Anaconda Aluminum Co Columbia Falls Reduction Plant Site in Columbia Falls in Flathead County, Montana and depicted generally on the map attached as Appendix B.

"State" shall mean the State of Montana.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any "hazardous material" under State law.

"Work" shall mean all activities that the Respondent is required to perform under this Settlement Agreement and the RI/FS Work Plan, except those required by Section XIV (Retention of Records).

V. EPA FINDINGS OF FACT

11. The Site is generally located approximately two miles northeast of Columbia Falls, Flathead County, Montana, in Township 30N, Range 20W, and includes all or a portion of Sections 2, 3, 4, 33, 34 and 35 and may include other sections.

12. Based on current information, the operational area of the Site covers approximately 953 acres. In general, the operational area of the Site lies north of the Flathead River, west of Teakettle Mountain, south of Cedar Creek Reservoir, and east of Cedar Creek..

13. The Site contains an aluminum smelting or reduction facility that produced aluminum in carbon-lined "pots" heated to 960 degrees Celsius. Aluminum oxide was dissolved in a molten cryolite bath and was reduced to aluminum metal by electrons from direct current through the pot. The molten aluminum was then tapped from the pot and cast into ingots.

14. The Site includes or included numerous buildings and industrial operating facilities such as offices, warehouses, fabrication, laboratory, paste plant, coal tar pitch tanks,

pump houses, and the main pot line facility. Features on the Site include, but are not limited to, percolation ponds, leachate ponds, sludge ponds, sewage treatment ponds, cathode soaking pits, closed landfills, and an operational industrial landfill.

15. In September and October, 2013, EPA conducted sampling of waste sources, soil, sediment, ground water, and surface water at or near the Site.

16. The results of these sampling events are documented in the EPA Site Reassessment Report ("EPA Report") dated April, 2014. The Report documents that there have been releases or threatened releases of hazardous substances at or from the Site from historical industrial activities at the plant, and that the disposal of hazardous substances at the Site have affected soil, sediment, ground water and/or surface water with concentrations of metals, including arsenic, cadmium, chromium, lead, manganese, nickel, selenium and zinc, as well as cyanide, fluoride, volatile organic compounds, semi-volatile organic compounds, polycyclic aromatic hydrocarbons, polychlorinated biphenyl compounds (PCBs), and pesticides.

17. Arsenic, cadmium, chromium, cyanide, lead, manganese, nickel, selenium, zinc and PCBs (Aroclor 1254) are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 101(14). These hazardous substances were found in the waste source areas, soil, sediment, ground water, and/or surface water as documented~~identified~~ in the EPA Report.

18. The EPA Report documents that ground~~Ground~~ water samples collected from ground water monitoring wells at the Site had detections of multiple contaminants including, but not limited to, arsenic, chromium, lead, selenium, cyanide, and fluoride at concentrations greater than the "Maximum Contaminant Level" ("MCL"), and zinc at concentrations greater than the Secondary MCL. The EPA Report also documents that cyanide~~Cyanide~~ has ~~also~~ been detected in single samples of two domestic wells near the property, but only one such well was able to be re-sampled and the sample result was non-detect~~not detected in subsequent samples of one such wells~~. The EPA Report additionally documented that s~~S~~urface water and sediment samples collected from the Flathead River, a known fishery, included detections of contaminants such as, but not limited to, cyanide and manganese. As a facility undergoing demolition, workers may also be exposed to contaminant releases.

19. The EPA Report documents that the~~The~~ contaminants in the ground water at the Site, including those contaminants detected at concentrations above their respective MCLs~~, as noted previously,~~ have the potential to migrate. ~~It is known that members of the community~~Community members near the Site use private domestic wells~~, which are not regularly monitored for pollutants,~~ as drinking water sources. The Flathead River is identified as a habitat for the Bull Trout, a federally designated threatened species, and the Westslope Cutthroat Trout, a federally designated sensitive species. This stretch of the Flathead River has wetland frontage on both sides of the river.

Commented [A4]: At the 8/5/2015 meeting, CFAC requested that the references to manganese and VOCs be deleted from the Findings of Fact (¶16, ¶18). The EPA negotiating team indicated that CFAC's proposal may be acceptable if the RI/FS Work Plan specifies that both manganese and VOCs will be evaluated during the RI, but that it needed to discuss CFAC's request w/ its Site Assessment Program.

Upon further consideration EPA believes the reference to manganese is appropriate in the EPA Findings of Fact. Based on information in the EPA Report, manganese was detected in source areas, including the north percolation pond water and sediment, and the south percolation pond water and sediment. Dissolved Manganese also met observed release conditions in groundwater samples down gradient of source areas (Section 4.2 and Table E30). Both Dissolved and Total Manganese were detected and met observed release conditions in Flathead River water samples (Section 4.3 and Tables E37 and E38).

Commented [A5]: At the 8/5/2015 meeting, CFAC requested that the references to manganese and VOCs be deleted from the Findings of Fact (¶16, ¶18). The EPA negotiating team indicated that CFAC's proposal may be acceptable if the RI/FS Work Plan specifies that both manganese and VOCs will be evaluated during the RI, but that it needed to discuss CFAC's request w/ its Site Assessment Program.

Upon further consideration EPA believes the reference to VOCs is appropriate in the EPA Findings of Fact. Based on information in the EPA Report, 2-butanone, a VOC, was detected in the south percolation pond. (Table E17). In addition, VOCs 2-butanone, bromomethane, dibromodifluoromethane, and toluene were detected in monitoring well MW-09. (Table E24).

20. Exposure to the contaminants detected at and near the Site above certain levels can lead to significant health effects, including, but not limited to, cancer, nerve damage, thyroid problems, kidney problems, bone disease, circulatory problems, and high blood pressure.

Commented [A6]: At the 8/5/2015 meeting, EPA committed to considering further refinement of the language in ¶ 20, specifically, considering whether EPA would be amenable to tying the finding to a statement in the EPA Report. A review of the EPA Report indicates that there is no explicit statement about specific health effects from exposure in the report itself because that falls outside the scope of the site reassessment. Based on available EPA and ATSDR toxicological information, EPA proposes the following statement in lieu of the existing sentence:

Health effects from exposure to cyanide, one of the principal contaminants at the Site, are documented in EPA's Integrated Risk Information System Toxicological Review for Hydrogen Cyanide and Cyanide Salts (September 2010) (thyroid, nervous system, and male reproductive organs). Health effects from exposure to fluoride, another principal contaminant, are identified in ATSDR's Toxicological Profile for Fluorine (Soluble Fluoride) (September 2003) (skeletal fluorosis). Health effects from exposure to arsenic, another principal contaminant, are documented in ATSDR's Toxicological Profile for Arsenic (August 2007) (nausea, vomiting, decreased blood cell production, patches of darkened skin, cancer of skin, liver, bladder and lungs, known human carcinogen).

21. The Site was proposed for inclusion on the National Priorities List ("NPL") pursuant to CERCLA Section 105, 42 U.S.C. § 9605, on March 26, 2015 (80 Fed. Reg. 15972).

22. The Anaconda Copper Mining Company built the Anaconda Aluminum Reduction Facility and its subsidiary, Anaconda Aluminum Company, owned and operated the facility and began production in 1955. In 1973, the Anaconda Aluminum Company merged into the Anaconda Company. In 1977, the Anaconda Company initiated a series of merger activities involving various corporate entities, which culminated in the 1981 merger of the Anaconda Company into the Atlantic Richfield Company. In 1985, the Columbia Falls Aluminum Company was incorporated as a Montana corporation. The Atlantic Richfield Company transferred the facility business to Columbia Falls Aluminum Company, a Montana corporation and sold Columbia Falls Aluminum Company to the Montana Aluminum Investors Corporation. In 1989, Montana Aluminum Investors Corporation merged into and with Columbia Falls Aluminum Company. In 1999, Columbia Falls Aluminum Company merged into Glencore Acquisition, LLC, surviving under the name of Columbia Falls Aluminum Company LLC. The Columbia Falls Aluminum Company LLC continued operating the plant until 2009.

23. Respondent is a Delaware limited liability company authorized to do business in the state of Montana, and is the current owner and operator of the Site. Glencore AG LLC owns all of the membership interests in Columbia Falls Aluminum Company LLC.

VI. EPA CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth in Section V, EPA has determined that:

24. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25. The contamination found at the Site, as identified in the Findings of Fact in Section V above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. The conditions described in the Findings of Fact in Section V above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. The Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

28. The Respondent is a responsible party under Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607 and 9622.

a. Respondent is the current "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and

within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

29. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

30. EPA has determined that the Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if the Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

31. Based upon the foregoing EPA FINDINGS OF FACT and EPA CONCLUSIONS OF LAW AND DETERMINATIONS, it is hereby Ordered and Agreed that the Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

32. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within 30 days after the Effective Date, and before the Work outlined below begins, the Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such Work. With respect to any proposed contractor, the Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, Jan. 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "*EPA Requirements for Quality Management Plans (QA/R-2)*," (EPA/240/B-01/002, Mar. 2001; Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for the Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that the Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, the Respondent shall notify EPA of the identity and qualifications of the replacement within 30 days after the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from the Respondent. During the course of the RI/FS, the Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles,

and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

33. Respondent has designated the following individual as Project Coordinator: Steve Wright, 2000 Aluminum Drive, Columbia Falls, MT 55912, (406) 892-8221, swright@cfaluminum.com. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, the Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. The Respondent shall have the right to change their Project Coordinator, subject to EPA's right to disapprove. The Respondent shall notify EPA 7[30] days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by the Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site Work. If the Project Coordinator will not be present on Site or readily available during Site Work for longer than 7 days, the Respondent shall notify in writing the EPA Remedial Project Manager (RPM) and the Montana Department of Environmental Quality ("DEQ") and provide the name of a back-up contact.

Commented [A7]: EPA initially proposed 30-day notification period, and CFAC counter proposed with 7-day notification period. EPA is willing to accept a 14-day notification period. At the 8/5/2015 meeting, CFAC requested an opportunity to consider EPA's 14-day proposal.

34. EPA has designated Mike Cirian of Region 8 as its ~~Remedial Project Manager ("RPM")~~. EPA will promptly notify the Respondent of a change of its designated RPM. Except as otherwise provided in this Settlement Agreement, the Respondent shall direct all submissions required by this Settlement Agreement to the EPA RPM as follows: (1) send submissions electronically to the EPA RPM at: cirian.mike@epa.gov and; (2) send three paper copies of the deliverables in the RI/FS Work Plan to the EPA RPM at: EPA Information Center, 108 E. 9th Street, Libby, MT 59923.

Commented [A8]: EPA originally proposed 5 copies, and CFAC counter proposed with 1 copy. During the 8/5/2015 meeting, CFAC agreed to provide 3 copies to EPA (RPM, contractor and community repository) and 1 copy directly to DEQ, with the understanding that EPA would confirm that a paper copy is needed for the community repository. EPA has confirmed w/ the Columbia Falls Public Library that it wishes to receive both paper and e-copies at this time. EPA does not need a paper copy for the administrative record.

35. The ~~Montana Department of Environmental Quality ("DEQ")~~ has designated Keith Large as its State Project Officer. DEQ will notify EPA and the Respondent of a change in its designated State Project Officer. The Respondent shall provide one paper copy of all submissions to EPA to the State Project Officer at the Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901 and by electronic mail to klarge@mt.gov.

36. EPA's designated RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's RPM shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

37. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the RI/FS Work Plan or SAPs.

IX. WORK TO BE PERFORMED

38. The Respondent shall conduct the RI/FS in accordance with the provisions of this Settlement Agreement, the RI/FS Work Plan, CERCLA, the NCP, and EPA guidance, including, but not limited to the "*Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA*" ("RI/FS Guidance") (OSWER Directive #9355.3-01, Oct. 1988 or subsequently issued guidance), "*Guidance for Data Useability in Risk Assessment*" (OSWER Directive #9285.7-09A, Apr. 1992 or subsequently issued guidance), and guidance referenced therein. The remedial investigation ("RI") shall consist of collecting data to characterize Site conditions, determining the nature and extent of the contamination at or from the Site, assessing risk to human health and the environment, and conducting treatability testing as necessary to evaluate the potential performance and cost of the treatment technologies that are being considered. The feasibility study ("FS") shall determine and evaluate (based on treatability testing, where appropriate) alternatives for remedial action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. The alternatives evaluated must include, but shall not be limited to, the range of alternatives described in the NCP, and shall include remedial actions that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. In evaluating the alternatives, the Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e).

39. The Respondent shall submit all deliverables to EPA and DEQ in electronic form. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", the Respondent also shall provide EPA with three paper copies of such maps, drawings, or other exhibits, and DEQ with one paper copy. In addition, the Respondent shall submit three paper copies of the deliverables in the RI/FS Work Plan in addition to submitting the deliverables in electronic form.

Commented [A9]: EPA originally proposed 5 copies, and CFAC counter proposed with 1 copy. Please see comment above regarding resolution of the copy issue.

40. Technical Specifications for Deliverables. The Respondent shall submit all sampling and monitoring data in accordance with the Electronic Data Deliverable (EDD) format prescribed in the RI/FS Work Plan.

41. Geographic Information System (GIS) Deliverables. The Respondent shall submit all spatial data, including spatially-referenced data and geospatial data, in accordance with the RI/FS Work Plan. Spatial data submitted by the Respondent does not, and is not intended to, define the boundaries of the Site. The delineation of Site boundaries is based upon the nature and extent of contamination, and where the contaminant(s) of concern has come to be located.

42. Modification of the RI/FS Work Plan.

a. If at any time during the RI/FS process, the Respondent identifies a need for additional data or deletion of tasks from the RI/FS work plan, the Respondent shall submit a memorandum documenting the need for additional data or task deletion to the EPA RPM within 30 days after identification. EPA, in its discretion, will determine whether the additional

data will be collected by the Respondent and whether it will be incorporated into plans, reports, and other deliverables, or the task deleted.

~~b. In the event of unanticipated or changed circumstances at the Site, the Respondent shall notify the EPA RPM by telephone within 24 hours of discovery of the unanticipated or changed circumstances and in writing within 7 days. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the SOW and/or any SAP, EPA shall modify or amend the SOW and/or SAPs in writing accordingly. The Respondent shall perform the SOW as modified or amended.~~

Commented [A10]: At the 8/5/2015 meeting, CFAC agreed to draft language to clarify changed unanticipated or changed site conditions or circumstances.

~~c.~~b. EPA may determine that in addition to tasks defined in the initially approved RI/FS Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS.

~~d.~~c. The Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days after receipt of the EPA request. If the Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, the Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The RI/FS Work Plan and/or SAPs shall be modified in accordance with the final resolution of the dispute, and Respondent agrees to perform the tasks in the modified RI/FS Work Plan or SAPs.

~~e.~~d. The Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the RI/FS Work Plan and/or SAPs. EPA reserves the right to conduct the Work itself at any point if the Respondent does not perform the Work, to seek reimbursement from the Respondent, and/or to seek any other appropriate relief.

~~f.~~e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

43. Off-Site Shipment. Except as (i) provided for in that certain State Administrative Order on Consent, Docket No. HW-1501 in In the Matter of: Implementation of the Hazardous Waste Act by Columbia Falls Aluminum Company LLC and Calbag Resources LLC at the Columbia Falls Reduction Facility, Flathead County, Montana, dated June 10, 2015, or (ii) in compliance with RCRA:

Commented [A11]: CFAC stated that CFAC has an AOC with the State of Montana for disposal of Spent Pot Liner from the CFAC site and CFAC is a large quantity generator with EPA ID number MTD057561763 FID 2386. CFAC stated further that compliance with AOC and RCRA requirements for applicable hazardous waste would achieve the goals of this section. EPA needs to confirm that the CFAC-State of Montana AOC meets the requirements of EPA's Off-Site Rule, and may need additional information from CFAC.

a. The Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. The Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if the Respondent obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the

criteria of 40 C.F.R. § 300.440(b). The Respondent may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if the Respondent complies with EPA's "*Guide to Management of Investigation Derived Waste,*" OSWER Directive #9345.3-03FS (Jan. 1992).

Commented [A12]: This is a housekeeping change proposed by EPA to correct the regulatory citation.

b. The Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. The Respondent also shall notify the state environmental official referenced above and the EPA RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. The Respondent shall provide the written notice after the award of the contract for remedial investigation and feasibility study and before the Waste Material is shipped.

44. Meetings. The Respondent shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

45. Progress Reports. In addition to the plans, reports, and other deliverables set forth in this Settlement Agreement, the Respondent shall provide to EPA and the DEQ State Project Officer quarterly progress reports for the periods, November/December/January, by February 30th, and February/March/April, by May 30th. The Respondent shall also provide to EPA and the DEQ State Project Officer and monthly progress reports during the months of May through October by the 30th day of the following month. At a minimum, with respect to the preceding quarter or month, these progress reports shall (a) describe the actions that have been taken to comply with this Settlement Agreement during that quarter or month, (b) include all validated results of sampling and tests and all other data received by the Respondent, (c) describe Work planned for the next quarter or two months with schedules relating such Work to the overall project schedule for RI/FS completion, and (d) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays. The Respondent shall provide to EPA and the State Project Officer database updates on a quarterly basis by the 30th day of the month following the end of the quarter. If the Respondent has no activity to report during a particular quarter or month, the Respondent shall send an email to the EPA RPM and DEQ State Project Officer stating that there is nothing to report for that period.

Commented [A13]: This section has been modified by EPA to reflect the Agency's desire to receive regular progress reports during the field season, as the parties discussed during the 8/5/2015 meeting. We have also clarified the frequency of required project database updates.

46. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during, arising from or relating to performance of the Work that causes or threatens a release of Waste Material from the Site which constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan (HASP), in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. The Respondent shall also immediately notify the EPA RPM or, in the event of his/her unavailability, the EPA Regional Duty Officer, Emergency Response Unit, at (303) 293-1788, and the National Response Center at (800) 424-8802 of the incident or Site conditions. The Respondent shall also notify the DEQ State Project Officer at (406) 444-6569 and the State's Disaster and Emergency Services (DES) 24-hour telephone number (406) 324-4777. If no one can be reached at the DES telephone number, the Respondent shall report the release to the DEQ duty officer at (406) 431-0014. In the event that the Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, the Respondent shall reimburse the EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, the Respondent shall immediately notify the EPA RPM, the EPA Regional Duty Officer, Emergency Response Unit, at (303) 293-1788, and the National Response Center at (800) 424-8802. The Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

47. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall, in a notice to the Respondent: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing the Respondent at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

48. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 47.a, 47.b, 47.c, 47.d, or 47.e, the Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, the Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 47.c and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

49. Resubmission.

a. Upon receipt of a notice of disapproval, the Respondent shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI (Stipulated Penalties), shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 50 and 51, respectively.

b. Notwithstanding the receipt of a notice of disapproval, the Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve the Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. The Respondent shall not proceed with any activities or tasks dependent on the following draft deliverables until receiving EPA approval, approval on condition, or modification of such deliverables: SAP including phase-specific SAPs, HASPs, Baseline Human Health Risk Assessment, Ecological Risk Assessment, RI Report, Treatability Studies Report, and FS Report. While awaiting EPA approval, approval on condition, or modification of these deliverables, the Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth in the RI/FS Work Plan.

d. For all remaining deliverables not listed above in Paragraph 49.c, the Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop the Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS.

50. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct the Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. The Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to the Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

51. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, the Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless the Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

52. In the event that EPA takes over some of the tasks, but not the preparation of the RI Report or the FS Report, the Respondent shall incorporate and integrate information supplied by EPA into the final reports.

53. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event that EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

54. Neither failure of EPA to expressly approve or disapprove of the Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

55. Quality Assurance. The Respondent shall assure that Work performed, samples taken, and analyses conducted conform to the requirements of the SOW, SAPs, and guidances identified therein. The Respondent shall assure that field personnel used by the Respondent are properly trained in the use of field equipment and in chain of custody procedures. The Respondent shall only use laboratories that have a documented quality system that complies with "*EPA Requirements for Quality Management Plans (QA/R-2)*" (EPA/240/B-01/002, Mar. 2001; Reissued May 2006) or equivalent documentation as determined by EPA.

56. Sampling.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by the Respondent, or on the Respondent's behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next progress report as described in Paragraph 45. EPA will make validated data generated by EPA available to the Respondent unless it is exempt from disclosure by any federal or state law or regulation.

b. The Respondent shall ~~orally~~verbally notify EPA and DEQ at least 30 days prior to conducting significant field events as described in the RI/FS Work Plan or SAPs. At EPA's ~~oral~~verbal or written request, or the request of the EPA's oversight assistant, the Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) and DEQ of any samples collected in implementing this Settlement Agreement. All split samples of the Respondent shall be analyzed by the methods identified in the QAPP.

Commented [A14]: The substitutions of "orally" for "verbally" are minor housekeeping change proposed by EPA.

57. Access to Information.

a. The Respondent shall provide to EPA and DEQ, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The Respondent shall also make available to EPA and DEQ, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. The Respondent may assert business confidentiality claims covering part or all of the Records submitted to EPA and DEQ under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified the Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to the Respondent. The Respondent shall segregate and clearly identify all Records submitted under this Settlement Agreement for which the Respondent asserts business confidentiality claims.

c. The Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing Records, they shall provide EPA and DEQ with the following: (i) the title of the Record; (ii) the date of the Record; (iii) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the Record; and (vi) the privilege asserted by the Respondent. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other Records evidencing conditions at or around the Site.

58. In entering into this Settlement Agreement, except for the matters contained in their comments to the proposed NPL listing referenced in Paragraph 21, the Respondent waives any objections to any data gathered, generated, or evaluated by EPA or the Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control ("QA/QC") procedures required by the Settlement Agreement, or any EPA-approved work plans or SAPs. If the Respondent objects to any other data relating to the RI/FS, the Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the next progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

59. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, the Respondent shall, commencing on the Effective Date, provide EPA and DEQ and EPA and DEQ representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

60. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than the Respondent, the Respondent shall use its best efforts to obtain all necessary access agreements within 90 days after the Effective Date, or as otherwise specified in writing by the EPA RPM. The Respondent shall notify EPA within 10 days if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. The Respondent shall describe in writing their efforts to obtain access. If the Respondent cannot obtain access agreements, EPA may either (a) obtain access for the Respondent or assist the Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate; (b) perform those tasks or activities with EPA contractors; or (c) terminate the

Settlement Agreement. The Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, the Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for all costs incurred in performing such tasks or activities. The Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports, and other deliverables.

61. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

62. The Respondent shall comply with all applicable state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-Site and requires a federal or state permit or approval, the Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

63. During the pendency of this Settlement Agreement and for a minimum of 10 years after commencement of construction of any remedial action, the Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, the Respondent shall also instruct their contractors and agents to preserve all Records of whatever kind, nature, or description relating to performance of the Work.

64. At the conclusion of this document retention period, the Respondent shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA, the Respondent shall deliver any such Records to EPA. The Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege, it shall provide EPA with the following: (a) the title of the Record; (b) the date of the Record; (c) the name and title of the author of the Record; (d) the name and title of each addressee and recipient; (d) a description of the subject of the Record; and (f) the privilege asserted by the Respondent. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

65. The Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. DISPUTE RESOLUTION

66. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

67. If the Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of their objection(s) within 30 days after such action, unless the objection(s) has/have been resolved informally. EPA and the Respondent shall have 30 days from EPA's receipt of the Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended upon mutual agreement of the Parties. Any extension may be granted verbally but must be confirmed in writing.

68. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation level or higher will issue a written decision. The Respondent shall be given an opportunity to meet with the dispute resolution decision maker or his or her delegate before the decision on the dispute is made to the extent practicable. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. The Respondent's obligations under this Settlement Agreement ~~that are not affected by the dispute resolution process~~ shall ~~proceed~~not be tolled by submission of any objection for dispute ~~resolution under this Section~~. Following resolution of the dispute, as provided by this Section, the Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether the Respondent agrees with the decision.

Commented [A15]: CFAC proposed the addition of the following language, "Respondent shall be given an opportunity to meet with the dispute resolution decision maker or his or her delegate before the decision on the dispute is made." CFAC's proposed language is acceptable to EPA with the qualifier, "to the extent practicable." At the 8/5/2015 meeting, CFAC requested an opportunity to consider EPA's proposed language.

Commented [A16]: At the 8/5/2015 meeting, EPA agreed to give further consideration to CFAC's proposed language. Upon further consideration EPA proposes the following clarifying language:

"Except as provided in Paragraph 85 (contesting Future Response Costs) or as agreed by EPA, Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section."

This clarifying language is intended to address CFAC's concern, and is consistent with the revised model AOC for RI/FS which is currently under development.

XVI. STIPULATED PENALTIES

69. The Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 70 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure).

70. Stipulated Penalty Amounts - Work (Including Payments).

a. Major Deliverables. Stipulated penalties shall accrue for each day of noncompliance for failure to timely submit the following deliverables or to

submit such deliverables in compliance with the terms of this Settlement Agreement, the RI/FS Work Plan or any SAP:

Major Deliverables	Stipulated Penalty Amount
1. Draft and Final Baseline Human Health Risk Assessment 2. Draft and Final Ecological Risk Assessment Report 3. Draft and Final Remedial Investigation Report 4. Draft and Final Feasibility Study Report	$1,000 per day for the first 14 days of noncompliance $4,000 per day for the 15th through 30th day of noncompliance $10,000 per day per violation lasting beyond 30 days

Commented [A17]: At the 8/5/2015 meeting, CFAC agreed to check deliverable names in the draft AOC against the draft RI/FS Work Plan.

b. Interim Deliverables. Stipulated penalties shall accrue for each day of noncompliance for failure to timely submit the following deliverables or to submit such deliverables in compliance with the terms of this Settlement Agreement, the RI/FS Work Plan or any SAP:

Interim Deliverables	Stipulated Penalty Amount
1. Draft and final written summary of major outcomes of project scoping follow-up meeting 2. Any revised work plan, including but not limited to the RI/FS Work Plan 3. An initial HASP, and revised task-specific HASPs 4. Phase-specific sampling and analysis plans 5. Summary report for each investigative phase of the RI 6. Project scoping summary 7. An original and any revised technical memorandum 8. An original and any revised letter report 9. Draft and Final Treatability Studies Technical Report 10. Project database and any project database updates	$1,000 per day for the first 14 days of noncompliance $4,000 per day for the 15th through 30th day of noncompliance $10,000 per day per violation lasting beyond 30 days

c. Other Violations. Stipulated penalties shall accrue for each day of noncompliance for the following violations.

Other Violations	Stipulated Penalty Amount
1. Failure to timely submit quarterly progress reports or to submit such reports in compliance with the terms of this Settlement Agreement, the SOW, or any SAPs. 2. Failure to submit any report or notification required under this Settlement Agreement, the RI/FS Work Plan or any SAPs. 3. Failure to provide access to EPA in accordance with this Settlement Agreement. 4. Failure to establish and maintain financial assurance in compliance with the timelines and other substantive and procedural requirements of Section XXVI (Financial Assurance).	$1,000 per day for the first 14 days of noncompliance $4,000 per day for the 15th through 30th day of noncompliance $10,000 per day per violation lasting beyond 30 days

71. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 (Work Takeover), the Respondent shall be liable for a stipulated penalty in the amount of $50,000 [1,000,000].

Commented [A18]: EPA initially proposed $1,000,000, and CFAC counter proposed $50,000. EPA counters CFAC's proposed $50,000 figure with $500,000. At the 8/5/2015 meeting, the parties agree to defer negotiations regarding a stipulated penalty for work takeover until CFAC tenders a financial assurance proposal to EPA per Section XXVI, ¶ 107.

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Respondent of any deficiency; and (b) with respect to a decision by the EPA management official designated in Paragraph 68 of Section XV (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

73. Following EPA's determination that the Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give the Respondent written notification of the same and describe the noncompliance. EPA may send the Respondent a written demand for the payment of the penalties. However, penalties shall not accrue as provided in the preceding Paragraph regardless of whether if EPA has not notified the Respondent of a violation.

Commented [A19]: CFAC's proposed modification is not acceptable to EPA b/c it unreasonably shifts the burden from the Respondent to comply with the Settlement Agreement to EPA to identify Respondent's noncompliance. At the 8/5/2015 meeting, CFAC requested an opportunity to further consider this issue.

74. All penalties accruing under this Section shall be due and payable to EPA within 30 days after the Respondent's receipt from EPA of a demand for payment of the penalties,

unless the Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). The Respondent shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, Site/Spill ID Number A882, and the EPA docket number for this action.

At the time of payment, the Respondent shall send notice that payment has been made as provided in Paragraph 83.b below.

75. The payment of penalties shall not alter in any way the Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

76. Except as provided for in Paragraph 73, penalties~~Penalties~~ shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until 30 days after the dispute is resolved by agreement or by receipt of EPA's decision.

Commented [A20]: CFAC's proposed language seems to obligate EPA to forgo its enforcement discretion (i.e., not to seek stipulated penalties). This deserves further discussion. At the 8/5/2015, CFAC requested an opportunity to further consider this issue, which is tied to ¶ 73.

77. If the Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. The Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74.

78. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 89. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

79. The Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of the Respondent or of any entity controlled by the Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite the Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

80. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, the Respondent shall notify EPA orally within 3 business days of when the Respondent first knew that the event might cause a delay. Within 14 days thereafter, the Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude the Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

Commented [A21]: At the 8/5/2015 meeting, CFAC requested an opportunity to give further consideration to the deadline for submitting the follow-up written force majeure explanation / description.

81. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify the Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify the Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

82. Payment of Past Response Costs.

a. Within 30 days after the Effective Date, the Respondent shall pay to EPA $743,133.86 for Past Response Costs. Payment shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Commented [A22]: Resolution of EPA's demand for payment of past response costs has been deferred until after EPA provides supporting cost documentation to CFAC and ARCO.

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727

SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A882 and the EPA docket number for this action.

b. At the time of payment, the Respondent shall send notice that payment has been made to the EPA RPM, and to the EPA Cincinnati Finance Center by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A882 and EPA docket number for this action.

c. The total amount to be paid by the Respondent pursuant to Paragraph 82.a shall be deposited by EPA in the Columbia Falls Aluminum Plant Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

83. Payments of Future Response Costs.

a. The Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send the Respondent a bill requiring payment that includes an Expenditure Summary Report, which includes direct and indirect costs incurred by EPA and its contractors, and DOJ. The Respondent shall make all payments within 60 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 85 of this Settlement Agreement. Payments shall be made to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A882 and the EPA docket number for this action.

Commented [A23]: At the 8/5/2015 meeting, CFAC requested an opportunity to give further consideration to the recovery of response costs incurred by DOJ on behalf of EPA.

Commented [A24]: At the 8/5/2015 meeting, EPA committed to checking with K. Land/ S. Wilder regarding CFAC's 60-day proposal. Ordinarily, EPA requires payment of future response costs within 30 days of Respondent's receipt of EPA's bill. Because CFAC has articulated a compelling site-specific reason (i.e., CFAC and Glencore need to coordinate review and payment of EPA's future response costs), EPA is willing to agree to an additional 30 days for the remittance of payment of response costs for a total of 60 days. EPA's counter-offer is contingent upon CFAC agreeing to drop its request to change the date on which interest on unpaid future response costs begins to accrue from the date of the bill to the due date in Paragraph 84 below.

b. At the time of payment, the Respondent shall send notice that payment has been made to the EPA RPM, and to the EPA Cincinnati Finance Center by email at cinwd_acctsreceivable@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A882 and the EPA docket number for this action.

c. The total amount to be paid by the Respondent pursuant to Paragraph 83.a shall be deposited by EPA in the Columbia Falls Aluminum Plant Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

84. Interest. If the Respondent does not pay Past Response Costs within 30 days after the Effective Date, or do not pay Future Response Costs within 3030 days after the Respondent's receipt of a bill, the Respondent shall pay Interest on the unpaid balance. The Interest on unpaid Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on unpaid Future Response Costs shall begin to accrue on the due date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of the Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI (Stipulated Penalties). The Respondent shall make all payments required by this Paragraph in the manner described in Paragraph 83.

85. The Respondent may contest payment of any Future Response Costs billed under Paragraph 83 if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP or this Settlement Agreement. Such objection shall be made in writing within 3030 days after receipt of the bill and must be sent to the EPA RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 3030 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 83. Simultaneously, the Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation, and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Respondent shall send to the EPA RPM a copy of the transmittal letter and wire transfer information paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondent shall initiate the Dispute Resolution procedures in

Commented [A25]: At the 8/5/2015 meeting, EPA committed to checking with K. Land/ S. Wilder regarding CFAC's 60-day proposal. Per the comment above with respect to Paragraph 83, EPA is amendable to CFAC's request for a 60 day payment period provided CFAC is willing to drop its request to change the date on which interest on unpaid future response costs begins to accrue from the date of the bill to the due date in Paragraph 84 below.

Commented [A26]: At the 8/5/2015 meeting, EPA committed to checking with K. Land/ S. Wilder regarding why the Agency cannot change the trigger for accrual of interest from the date of the bill to the due date. EPA is willing to make an exception to the standard 30-day period for remitting payment of future response costs by agreeing to a 60-day period given that CFAC has articulated a compelling site-specific reason (i.e., two business entities must coordinate review and payment of future response costs). However, the Agency is not willing to agree to change the interest accrual trigger because CFAC has not articulated a site-specific reason that would justify further deviation from standard Agency practice.

Commented [A27]: At the 8/5/2015 meeting, EPA committed to checking with K. Land/ S. Wilder regarding CFAC's 60-day proposal. Given that CFAC has articulated a compelling site-specific reason (i.e., two business entities must coordinate review and payment of future response costs), EPA is amendable to CFAC's request for a 60 day payment period to lodge an objection to future response costs, provided CFAC is willing to drop its request to change the date on which interest on unpaid future response costs begins to accrue from the date of the bill to the due date in Paragraph 84 above.

Commented [A28]: At the 8/5/2015 meeting, EPA committed to checking with K. Land/ S. Wilder regarding CFAC's 60-day proposal. As noted above, EPA is willing to make an exception to the standard 30-day period for remitting payment of future response costs by agreeing to a 60-day period given that CFAC has articulated a compelling site-specific reason (i.e., two business entities must coordinate review and payment of future response costs).

Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 business days after the resolution of the dispute, the Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 83. If the Respondent prevails concerning any aspect of the contested costs, the Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 83. The Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Respondent's obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

86. In consideration of the actions that will be performed and the payments that will be made by the Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against the Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 83 (Payment of Future Response Costs). This covenant not to sue extends only to the Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

87. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

88. The covenant not to sue set forth in Section XIX (Covenant Not to Sue by EPA) above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by the Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the ATSDR related to the Site not paid as Future Response Costs under this Settlement Agreement.

89. Work Takeover. In the event that EPA determines that the Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. The Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Respondent shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

90. The Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Past Response Costs or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), relating to the Work or payment of Past Response Costs or Future Response Costs.

91. The Respondent agrees not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of

the Work in any way affected the basis for listing the Site. The Respondent reserves the right to seek judicial review of the final rule listing the Site on the NPL for any other reason.

Commented [A29]: At the 8/5/2015 meeting, the parties agreed to the inserted language.

92. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 88.a (liability for failure by the Respondent to meet a requirement of the Settlement Agreement) or 88.d (criminal liability), but only to the extent that the Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

93. The Respondent reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of the Respondent's plans, reports, other deliverables, or activities.

94. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

95. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondent.

96. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

97. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

98. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XXI (Covenant Not to Sue by Respondent), each of the Parties expressly

reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

99. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

100. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which the Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

101. The Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA and DEQ in writing no later than 60 days prior to the initiation of such suit or claim. The Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, the Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

Commented [A30]: At the 8/5/2015 meeting, CFAC requested an opportunity to give further consideration to advance notification. EPA indicated that a narrow window would be acceptable given that this site does not involve either de minimis or de micromis parties, but that the Agency was not willing to accept no pre-notification due to the precedent it would set for other settlements agreements.

102. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XIX (Covenant Not to Sue by EPA).

XXIV. INDEMNIFICATION

103. The Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of the Respondent and its officers, directors, employees, agents, contractors, subcontractors, and representatives in carrying out actions pursuant to this Settlement

Agreement. In addition, the Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of the Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of the Respondent in carrying out activities pursuant to this Settlement Agreement. Neither the Respondent nor any such contractor shall be considered an agent of the United States.

104. The United States shall give the Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with the Respondent prior to settling such claim.

105. The Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site. In addition, the Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site.

XXV. INSURANCE

106. At least ~~30~~ days prior to commencing any on-Site Work under this Settlement Agreement, the Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of one million dollars, for any one occurrence, and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of the Respondent pursuant to this ~~Settlement Agreement~~Order. Within the same period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. The Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, the Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Respondent in furtherance of this Settlement Agreement. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Respondent needs provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

Commented [A31]: At the 8/5/2015 meeting, CFAC requested an opportunity to consider EPA's counter-proposal of 14 calendar days or 10 business days.

Commented [A32]: This is a minor housekeeping change proposed by EPA.

XXVI. FINANCIAL ASSURANCE

107. ~~Within 60 days after the Effective Date, In order to ensure completion of the Work,~~ the Respondent shall establish and maintain financial ~~assurance~~security ~~for the benefit of EPA~~ in the amount of four million dollars ~~for the benefit of EPA~~ ~~in one or more of the following~~

forms, in order to secure the full and final completion of Work by the Respondent. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds and/or insurance policies.

Commented [A33]: This proposed EPA addition clarifies EPA's expectations about the use of particular financial assurance mechanisms, and is based on new language in EPA's revised draft model AOC for RI/FS which is currently under development. Although the new model has not been released publicly, EPA has added this language b/c it highlights that the Agency has made available sample financial assurance documents. These sample documents may be helpful to the company in meeting EPA's financial assurance expectations.

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of the Respondent, or by one or more unrelated companies that have a substantial business relationship with the Respondent, including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by the Respondent, which shall consist of a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

108. The Respondent has selected, and EPA has found satisfactory, as an initial financial assurance, a [insert type] in the form attached as Appendix C. Within 60 days after the Effective Date, or 60 days after EPA's approval of the form and substance of the Respondent's financial assurance, whichever is later, the Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of financial assurance attached as Appendix C.

Commented [A34]: In anticipation of CFAC's financial assurance proposal and in hopes that the parties will reach agreement on acceptable financial assurance, this proposed EPA addition clarifies the timing for executing financial assurance. Importantly, EPA has accepted CFAC's request for a 60-day period to execute mechanisms or other documents consistent with the agreed upon form of financial assurance.

~~108.~~109. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, the Respondent shall, within 30 days after receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 107, above. In addition, if at any time EPA notifies the Respondent that the anticipated cost of completing the Work has increased, then, within 30 days after such notification, the Respondent shall obtain and present to EPA for approval a revised form of

financial assurance (otherwise acceptable under this Section) that reflects such cost increase. The Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

~~109.~~110. If, after the Effective Date, the Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 107 of this Section, the Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. The Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, the Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

~~110.~~111. The Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, the Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. INTEGRATION/APPENDICES

~~111.~~112. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the RI/FS Work Plan; ~~and~~

"Appendix B" is the map of the Site

"Appendix C" is a description of the form of financial assurance.

Commented [A35]: At the 8/5/2015 meeting, the parties agreed to use Figure 1 in CFAC's draft RI/FS Work Plan as the Site map.

Commented [A36]: This language is new and is intended to mirror the substantive financial assurance provision (Section XXVI, paragraph 108).

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

~~112.~~113. This Settlement Agreement shall be effective on the date that the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

~~113.~~114. This Settlement Agreement may be amended by mutual agreement of EPA and the Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA RPMs do not have the authority to sign amendments to the Settlement Agreement.

~~114.~~115. No informal advice, guidance, suggestion, or comment by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

~~115.~~116. When EPA determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Future Response Costs and record retention, EPA will provide written notice to the Respondent. If EPA determines that any Work has not been completed in accordance with this Settlement Agreement, EPA will notify the Respondent, provide a list of the deficiencies, and require that the Respondent modify the RI/FS Work Plan and SAPs if appropriate in order to correct such deficiencies, in accordance with Paragraph 42 (Modification of the RI/FS Work Plan). Failure by the Respondent to implement the approved modified RI/FS Work Plan or SAPs shall be a violation of this Settlement Agreement.

Agreed this ___ day of _____, 2015.

For Respondent Columbia Falls Aluminum Company

By: _____

Title: _____

It is so ORDERED AND AGREED this _____ day of _____, 2015.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 8

By: _____ Date: _____
Julie DalSoglio
Director, Montana Office

By: _____ Date: _____
Kelcey Land
Director, Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

By: _____ Date: _____
Andrea Madigan
Acting Supervisory Attorney, Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice